

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIE C DAVIS,

Plaintiff,

v.

PETER GREEN, JAMES HARVEY,
ERIC SMITH,

Defendants.

CASE NO. 3:16-CV-05146-RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: NOVEMBER 18, 2016

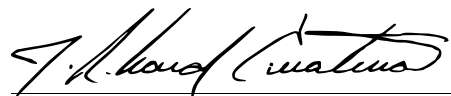
The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Defendant DOC filed the pending motion for summary judgment, asserting that plaintiff's complaint failed as a matter of law because plaintiff failed to name a viable defendant. Dkt. 11. After the motion for summary judgment was filed, plaintiff filed a motion to amend his complaint. Dkt. 19. In a separate order, the Court granted plaintiff leave to file an amended complaint. *See* Dkts. 20, 21.

1 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
2 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*
3 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
4 693 F.3d 896 (9th Cir. 2012). Defendant DOC’s motion for summary judgment attacks the
5 original complaint, which is “non-existent” because plaintiff has filed an amended complaint.
6 *See* Dkts. 20, 21. Moreover, defendant DOC is no longer a named defendant in plaintiff’s First
7 Amended Complaint. *See* Dkt. 21. Accordingly, the undersigned recommends that defendant
8 DOC’s motion for summary judgment (Dkt. 11) be denied as moot.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
10 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
11 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
12 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
13 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
14 **November 18, 2016** as noted in the caption.

15 Dated this 24th day of October, 2016.

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18 J. Richard Creatura
19 United States Magistrate Judge
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